



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

June 5, 2009

THE ASSISTANT SECRETARY

DCL ID: GEN-09-08

Dear Colleague:

We are writing to elicit information from currently recognized accrediting agencies that will allow the Accreditation and State Liaison (ASL) staff to assess accrediting agencies' compliance with the Secretary's Criteria for Recognition in light of new provisions in the Higher Education Opportunity Act of 2008 (HEOA) (Public Law 110-315). In addition, information is provided to accrediting agencies on how the ASL staff will proceed with the review of accrediting agency petitions for recognition, reports, and other submissions prior to the publication of new regulations.

The HEOA was enacted on August 14, 2008, reauthorizing the Higher Education Act of 1965, as amended (the HEA). The HEOA makes a number of changes to Title IV, Part H – Program Integrity, subpart 2 - Accrediting Agency Recognition. These changes were effective August 14, 2008, and accrediting agencies are responsible for taking immediate steps to comply with the new provisions.

The Department is developing regulations reflecting the changes made by the HEOA and will address certain other issues regarding recognition through the negotiated rulemaking process now underway. This process will result in the publication of final regulations by November 1, 2009. Under the HEA, these regulations will be effective July 1, 2010. Until that time, the Department will not grant renewals of recognition nor initial recognition. However, the Department will go forward with its ASL staff review process.

Review of New Requirements

All currently-recognized agencies must make a good faith showing of their implementation of the HEOA provisions. Agencies are required to submit, within 45 days of the date of this letter, information demonstrating that they are compliant with the new statutory requirements. Agencies are requested to provide their responses to the new provisions via the Department's On-Line Secretarial Recognition Submission Process system. Upon accessing the system, agencies will be directed to the screen pages provided for responding to the new HEOA requirements. Submission of this information will provide the Department with assurance that agencies are implementing the HEOA requirements that were effective as of August 14, 2008.

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Enclosed is a copy of Section 496 of the HEA with the changes made by the HEOA indicated by the italicized and struck-through text. The new provisions in the HEOA, with the exception of HEA Section 496(a)(5)(A) related to student achievement (20 U.S.C. § 1099b(a)(5)(A) [the associated regulation is at 34 CFR 602.16(a)(1)], supplement rather than supplant current regulations. Also included are two provisions (definitions) from Title I that affect accrediting agencies.

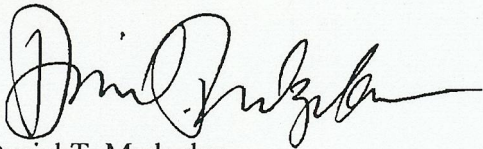
Recognition Review Process

The Accrediting Agency Evaluation Unit (AAEU) of ASL is continuing the review process of agency petitions, reports and other submissions as scheduled. Agencies that were scheduled for a December 2008 or a June 2009 review before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) submitted their petitions and reports as requested or were granted an extension. Agencies currently scheduled for a December 2009 or June 2010 review by the NACIQI must submit their petitions and reports no later than June 29, 2009, and January 4, 2010, respectively.

Staff will continue to conduct on-site observations and will be communicating with agencies under review throughout this period to provide guidance and assistance to correct any issues identified during the review process and to solicit information regarding changes agencies are developing and implementing subsequent to the submission of their petitions and reports. Subject to any procedural changes incorporated into the new regulations, once the NACIQI appointments are made, final regulations are published, and any additional agency submissions needed to demonstrate compliance with the new regulations are received and analyzed by ASL staff, a NACIQI meeting date for agency reviews will be established, and draft staff reports will be sent to agencies for their review and response.

Thank you for your kind attention to these matters. If you have any questions, please contact Accreditation and State Liaison staff at (202) 219-7011.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Madzelan", with a long, sweeping horizontal line extending to the right.

Daniel T. Madzelan

Delegated the Authority to Perform the Functions and Duties of
the Assistant Secretary for Postsecondary Education

Attachment

ATTACHMENT

SEC. 496. [20 U.S.C. 1099b] RECOGNITION OF ACCREDITING AGENCY OR ASSOCIATION.

(a) CRITERIA REQUIRED.—No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this Act or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—

(A)(i) for the purpose of participation in programs under this Act, has a voluntary membership of institutions of higher education and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in subparagraph (A); or

(C) is an agency or association that, for the purpose of determining eligibility for student assistance under this title, conducts accreditation through

(i) a voluntary membership organization of individuals participating in a profession, or

(ii) an agency or association which has as its principal purpose the accreditation of programs within institutions, which institutions are accredited by another agency or association recognized by the Secretary;

(3) if such agency or association is an agency or association described in—

(A) subparagraph (A)(i) of paragraph (2), then such agency or association is separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization;

(B) subparagraph (B) of paragraph (2), then such agency or association has been recognized by the Secretary on or before October 1, 1991; or

(C) subparagraph (C) of paragraph (2) and such agency or association has been recognized by the Secretary on or before October 1, 1991, then the Secretary may waive the requirement that such agency or association is separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization upon a demonstration that

the existing relationship has not served to compromise the independence of its accreditation process;

(4) (A) such agency or association consistently applies and enforces standards that *respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered; and*

(B) *if such an agency or association has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education, such agency or association shall, in addition to meeting the other requirements of this subpart, demonstrate to the Secretary that—*

(i) *the agency's or association's standards effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (5), except that—*

(I) *the agency or association shall not be required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education institutions or programs in order to meet the requirements of this subparagraph; and*

(II) *in the case that the agency or association is recognized by the Secretary, the agency or association shall not be required to obtain the approval of the Secretary to expand its scope of accreditation to include distance education or correspondence education, provided that the agency or association notifies the Secretary in writing of the change in scope; and*

(ii) *the agency or association requires an institution that offers distance education or correspondence education to have processes through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the program and receives the academic credit;*

(5) the standards for accreditation of the agency or association assess the institution's—

(A) success with respect to student achievement in relation to the institution's mission, *which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates;*

(B) curricula;

(C) faculty;

(D) facilities, equipment, and supplies;

(E) fiscal and administrative capacity as appropriate to the specified scale of operations;

(F) student support services;

(G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;

(H) measures of program length and the objectives of the degrees or credentials offered;

(I) record of student complaints received by, or available to, the agency or association; and

(J) record of compliance with its program responsibilities under title IV of this Act based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any such other information as the Secretary may provide to the agency or association; except that subparagraphs (A), (H), and (J) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;

~~(6) such agency or association shall apply procedures throughout the accrediting process, including evaluation and withdrawal proceedings, that comply with due process, including—~~

~~(A) adequate specification of requirements and deficiencies at the institution of higher education or program being examined;~~

~~(B) notice of an opportunity for a hearing by any such institution;~~

~~(C) the right to appeal any adverse action against any such institution; and~~

~~(D) the right to representation by counsel for any such institution;~~

(6) such an agency or association shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures that provide—

(A) for adequate written specification of—

(i) requirements, including clear standards for an institution of higher education or program to be accredited; and

(ii) identified deficiencies at the institution or program examined;

(B) for sufficient opportunity for a written response, by an institution or program, regarding any deficiencies identified by the agency or association to be considered by the agency or association—

(i) within a timeframe determined by the agency or association; and

(ii) prior to final action in the evaluation and withdrawal proceedings;

(C) upon the written request of an institution or program, for an opportunity for the institution or program to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final at a hearing before an appeals panel that—

(i) shall not include current members of the agency's or association's underlying decisionmaking body that made the adverse decision; and

(ii) is subject to a conflict of interest policy;

(D) for the right to representation and participation by counsel for an institution or program during an appeal of the adverse action;

(E) for a process, in accordance with written procedures developed by the agency or association through which an institution or program, before a final adverse action based solely upon a failure to meet a standard or criterion pertaining to finances, may on one occasion seek review of significant financial information that was unavailable to the institution or program prior to the

determination of the adverse action, and that bears materially on the financial deficiencies identified by the agency or association;

(F) in the case that the agency or association determines that the new financial information submitted by the institution or program under subparagraph (E) meets the criteria of significance and materiality described in such subparagraph, for consideration by the agency or association of the new financial information prior to the adverse action described in such subparagraph becoming final; and

(G) that any determination by the agency or association made with respect to the new financial information described in subparagraph (E) shall not be separately appealable by the institution or program.

(7) such agency or association shall notify the Secretary and the appropriate State licensing or authorizing agency within 30 days of the accreditation of an institution or any final denial, withdrawal, suspension, or termination of accreditation or placement on probation of an institution, together with any other adverse action taken with respect to an institution; and

(8) such agency or association shall make available to the public, upon request, and to the Secretary, and the State licensing or authorizing agency a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation, together with the comments of the affected institution.

(b) SEPARATE AND INDEPENDENT DEFINED.—For the purpose of subsection (a)(3), the term “separate and independent” means that—

(1) the members of the postsecondary education governing body of the accrediting agency or association are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) among the membership of the board of the accrediting agency or association there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest;

(3) dues to the accrediting agency or association are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(4) the budget of the accrediting agency or association is developed and determined by the accrediting agency or association without review or resort to consultation with any other entity or organization.

(c) OPERATING PROCEDURES REQUIRED.—No accrediting agency or association may be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this title, unless the agency or association—

(1) performs, at regularly established intervals, on-site inspections and reviews of institutions of higher education (which may include unannounced site visits) with particular focus on educational quality and program effectiveness, and

ensures that accreditation team members are well-trained and knowledgeable with respect to their responsibilities, *including those regarding distance education;*

(2) monitors the growth of programs at institutions that are experiencing significant enrollment growth;

(3) requires an institution to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

(A) the Department notifies the accrediting agency of an action against the institution pursuant to section 487(f);

(B) the accrediting agency acts to withdraw, terminate or suspend the accreditation of an institution; or

(C) the institution notifies the accrediting agency that the institution intends to cease operations;

(2) (4) requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus;

(3) (5) agrees to conduct, as soon as practicable, but within a period of not more than 6 months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership;

(4) (6) requires that teach-out agreements among institutions are subject to approval by the accrediting agency or association consistent with standards promulgated by such agency or association;

(5) maintains and makes publicly available written materials regarding standards and procedures for accreditation, appeal procedures, and the accreditation status of each institution subject to its jurisdiction; and

(7) makes available to the public and the State licensing or authorizing agency, and submits to the Secretary, a summary of agency or association actions, including—

(A) the award of accreditation or reaccreditation of an institution;

(B) final denial, withdrawal, suspension, or termination of accreditation of an institution, and any findings made in connection with the action taken, together with the official comments of the affected institution; and

(C) any other adverse action taken with respect to an institution or placement on probation of an institution;

(6) (8) discloses publicly whenever an institution of higher education subject to its jurisdiction is being considered for accreditation or reaccreditation, and

(9) confirms, as a part of the agency's or association's review for accreditation or reaccreditation, that the institution has transfer of credit policies—

(A) that are publicly disclosed; and

(B) that include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(d) LENGTH OF RECOGNITION.—No accrediting agency or association may be recognized by the Secretary for the purpose of this Act for a period of more than 5 years.

(e) INITIAL ARBITRATION RULE.—The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

(f) JURISDICTION.—Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary for the purpose of this title and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.

(g) LIMITATION ON SCOPE OF CRITERIA.—Nothing in this Act shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this Act shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. *Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.*

(h) CHANGE OF ACCREDITING AGENCY.—The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.

(i) DUAL ACCREDITATION RULE.—The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency's accreditation shall be utilized in determining the institution's eligibility for programs under this Act.

(j) IMPACT OF LOSS OF ACCREDITATION.—An institution may not be certified or recertified as an institution of higher education under section 102 and subpart 3 of this part or participate in any of the other programs authorized by this Act if such institution—

(1) is not currently accredited by any agency or association recognized by the Secretary;

(2) has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(3) has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.

(k) RELIGIOUS INSTITUTION RULE.—Notwithstanding subsection (j), the Secretary shall allow an institution that has had its accreditation withdrawn, revoked, or otherwise terminated, or has voluntarily withdrawn from an accreditation agency, to remain certified as an institution of higher education under section 102 and subpart 3 of this part for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that the reason for the withdrawal, revocation, or termination—

(1) is related to the religious mission or affiliation of the institution; and

(2) is not related to the accreditation criteria provided for in this section.

(l) LIMITATION, SUSPENSION, OR TERMINATION OF RECOGNITION.—

(1) If the Secretary determines that an accrediting agency or association has failed to apply effectively the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary shall—

(A) after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association; or

(B) require the agency or association to take appropriate action to bring the agency or association into compliance with such requirements within a timeframe specified by the Secretary, except that—

(i) such timeframe shall not exceed 12 months unless the Secretary extends such period for good cause; and

(ii) if the agency or association fails to bring the agency or association into compliance within such timeframe, the Secretary shall, after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association.

(2) The Secretary may determine that an accrediting agency or association has failed to apply effectively the standards provided in this section if an institution of higher education seeks and receives accreditation from the accrediting agency or association during any period in which the institution is the subject of any interim action by another accrediting agency or association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension, revocation, or termination of accreditation or the institution has been notified of the threatened loss of accreditation, and the due process procedures required by such suspension, revocation, termination, or threatened loss have not been completed.

(m) LIMITATION ON THE SECRETARY'S AUTHORITY.—The Secretary may only recognize accrediting agencies or associations which accredit institutions of higher education for the purpose of enabling such institutions to establish eligibility to participate in the programs under this Act or which accredit institutions of higher education or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies.

(n) INDEPENDENT EVALUATION.—(1) The Secretary shall conduct a comprehensive review and evaluation of the performance of all accrediting agencies or

associations which seek recognition by the Secretary in order to determine whether such accrediting agencies or associations meet the criteria established by this section. The Secretary shall conduct an independent evaluation of the information provided by such agency or association. Such evaluation shall include—

(A) the solicitation of third-party information concerning the performance of the accrediting agency or association; and

(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions.

(2) The Secretary shall place a priority for review of accrediting agencies or associations on those agencies or associations that accredit institutions of higher education that participate most extensively in the programs authorized by this title and on those agencies or associations which have been the subject of the most complaints or legal actions.

(3) The Secretary shall consider all available relevant information concerning the compliance of the accrediting agency or association with the criteria provided for in this section, including any complaints or legal actions against such agency or association. In cases where deficiencies in the performance of an accreditation agency or association with respect to the requirements of this section are noted, the Secretary shall take these deficiencies into account in the recognition process. The Secretary shall not, under any circumstances, base decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section. When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association's scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.

(4) The Secretary shall maintain sufficient documentation to support the conclusions reached in the recognition process, and, if the Secretary does not recognize any accreditation agency or association, shall make publicly available the reason for denying recognition, including reference to the specific criteria under this section which have not been fulfilled.

(o) REGULATIONS.—The Secretary shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary's decisions. *Notwithstanding any other provision of law, the Secretary shall not promulgate any regulations with respect to the standards of an accrediting agency or association described in subsection (a)(5).*

(p) RULE OF CONSTRUCTION.— *Nothing in subsection (a)(5) shall be construed to restrict the ability of—*

(1) an accrediting agency or association to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association; or

(2) an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

(q) REVIEW OF SCOPE CHANGES.—The Secretary shall require a review, at the next available meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency or association under subsection (a)(4)(B)(i)(II) if the enrollment of an institution that offers distance education or correspondence education that is accredited by such agency or association increases by 50 percent or more within any one institutional fiscal year.

Title I Provisions of the HEOA Affecting Accrediting Agencies

Sec. 102. DEFINITION OF INSTITUTION OF HIGHER EDUCATION FOR PURPOSES OF TITLE IV PROGRAMS

* * *

(b) PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—

(1) PRINCIPAL CRITERIA.—For the purpose of this section, the term “proprietary institution of higher education” means a school that—

~~(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;~~

(A)(i) provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or

(ii)(I) provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and

(II) is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

* * *

Sec 103 Additional Definitions

(a) Additional Definitions—

* * *

(19) DISTANCE EDUCATION.—

(A) IN GENERAL.—Except as otherwise provided, the term “distance education” means education that uses one or more of the technologies described in subparagraph (B)—

(i) to deliver instruction to students who are separated from the instructor; and

(ii) to support regular and substantive instruction between the students and the instructor, synchronously or asynchronously.

(B) INCLUSIONS.—For the purposes of subparagraph (a), the technologies used may include—

(i) the Internet;

(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(iii) audioconferencing; or

(iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii).